

AMENDED IN SENATE MARCH 23, 2010

**SENATE BILL**

**No. 1018**

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**Introduced by Senator Harman**

February 10, 2010

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An act to amend, *repeal, and add* Section 3604 of the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 1018, as amended, Harman. Death penalty: ~~sodium thiopental~~. *lethal injection protocol.*

Existing law provides that a person sentenced to death shall have the opportunity to elect to have the punishment imposed by lethal gas or by ~~a~~ *an intravenous* lethal injection of a nonspecified substance *or substances* by standards established under the direction of the Department of Corrections *and Rehabilitation*. If no election is made, the penalty of death shall be imposed by lethal injection.

This bill would specify that, *on or after January 1, 2013*, the substance to be used for the lethal injection shall be ~~sodium thiopental~~ *an ultra-short-acting barbiturate or other similar drug, not to be used in combination with a chemical paralytic. The bill would require the department to develop and implement a lethal injection protocol for this drug to be available for use on and after January 1, 2013. The bill would delete the requirement that the lethal injection be intravenous.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3604 of the Penal Code is amended to  
2 read:

3     3604. (a) The punishment of death shall be inflicted by the  
4 administration of a lethal gas or by an ~~intravenous~~ injection of  
5 ~~sodium thiopental~~ *a substance or substances* in a lethal quantity  
6 sufficient to cause death, by standards established under the  
7 direction of the Department of Corrections and Rehabilitation.

8     (b) Persons sentenced to death prior to or after the operative  
9 date of this subdivision shall have the opportunity to elect to have  
10 the punishment imposed by lethal gas or lethal injection. This  
11 choice shall be made in writing and shall be submitted to the  
12 warden pursuant to regulations established by the Department of  
13 Corrections and Rehabilitation. If a person under sentence of death  
14 does not choose either lethal gas or lethal injection within 10 days  
15 after the warden's service upon the inmate of an execution warrant  
16 issued following the operative date of this subdivision, the penalty  
17 of death shall be imposed by lethal injection.

18     (c) Where the person sentenced to death is not executed on the  
19 date set for execution and a new execution date is subsequently  
20 set, the inmate again shall have the opportunity to elect to have  
21 punishment imposed by lethal gas or lethal injection, according to  
22 the procedures set forth in subdivision (b).

23     (d) Notwithstanding subdivision (b), if either manner of  
24 execution described in subdivision (a) is held invalid, the  
25 punishment of death shall be imposed by the alternative means  
26 specified in subdivision (a).

27     (e) *The department shall develop and implement a lethal*  
28 *injection protocol for use on and after January 1, 2013, that utilizes*  
29 *the injection of a lethal quantity of an ultra-short-acting*  
30 *barbiturate or other similar drug, not to be used in combination*  
31 *with a chemical paralytic, in a quantity sufficient to cause death*  
32 *according to standards established under the direction of the*  
33 *department. This requirement shall not affect the validity of any*  
34 *existing lethal injection protocol.*

35     (f) *This section shall remain in effect only until January 1, 2013,*  
36 *and as of that date is repealed, unless a later enacted statute, that*  
37 *is enacted before January 1, 2013, deletes or extends that date.*

38     SEC. 2. Section 3604 is added to the Penal Code, to read:

1     3604. (a) *The punishment of death shall be inflicted by the*  
2 *administration of a lethal gas or by an injection of a lethal quantity*  
3 *of an ultra-short-acting barbiturate or other similar drug, not to*  
4 *be used in combination with a chemical paralytic, in a quantity*  
5 *sufficient to cause death according to standards established under*  
6 *the direction of the Department of Corrections and Rehabilitation.*

7     (b) *Persons sentenced to death prior to or after the operative*  
8 *date of this subdivision shall have the opportunity to elect to have*  
9 *the punishment imposed by lethal gas or lethal injection. This*  
10 *choice shall be made in writing and shall be submitted to the*  
11 *warden pursuant to regulations established by the Department of*  
12 *Corrections and Rehabilitation. If a person under sentence of death*  
13 *does not choose either lethal gas or lethal injection within 10 days*  
14 *after the warden's service upon the inmate of an execution warrant*  
15 *issued following the operative date of this subdivision, the penalty*  
16 *of death shall be imposed by lethal injection.*

17     (c) *Where the person sentenced to death is not executed on the*  
18 *date set for execution and a new execution date is subsequently*  
19 *set, the inmate again shall have the opportunity to elect to have*  
20 *punishment imposed by lethal gas or lethal injection, according*  
21 *to the procedures set forth in subdivision (b).*

22     (d) *Notwithstanding subdivision (b), if any manner of execution*  
23 *described in subdivision (a) is held invalid, the punishment of*  
24 *death shall be imposed by any of the alternative means specified*  
25 *in subdivision (a).*

26     (e) *This section shall become operative on January 1, 2013.*